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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2018–0048; FXMB 12320900000//201//FF09M29000]

List of Bird Species to Which the Migratory Bird Treaty Act Does Not Apply

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, are publishing an amended list of the nonnative bird species that have been introduced by humans into the United States or U.S. territories and to which the Migratory Bird Treaty Act (MBTA) does not apply. The Migratory Bird Treaty Reform Act (MBTRA) of 2004 amends the MBTA by stating that the MBTA applies only to migratory bird species that are native to the United States or U.S. territories, and that a native migratory bird species is one that is present as a result of natural biological or ecological processes. The MBTRA requires that we publish a list of all nonnative, human-introduced bird species to which the MBTA does not apply. We first published a list in 2005. We update the 2005 list with this notice. This notice identifies those species belonging to biological families referred to in treaties the MBTA implements that are not protected because their presence in the United States or U.S. territories is solely the result of intentional or unintentional human-assisted introductions. This notice presents an updated list of species not protected by the MBTA, which reflects current taxonomy, removes one species that no longer occurs in a protected family, and removes two species as a result of new distributional records documenting their natural occurrence in the United States.

FOR FURTHER INFORMATION CONTACT: Eric L. Kershner, Chief, Branch of Conservation, Permits, and Regulations; Division of Migratory Bird Management; U.S. Fish and Wildlife Service; MS: MB; 5275 Leesburg Pike, Falls Church, VA 22041-3803; (703) 358-2376.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

The purpose of this notice is to provide the public an updated list of “all nonnative, human-introduced bird species to which the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) does not apply,” as described in the MBTRA of 2004 (Division E, Title I, Sec. 143 of the Consolidated Appropriations Act, 2005; Pub. L. 108-447). The MBTRA states that “[a]s necessary, the Secretary may update and publish the list of species exempted from protection of the Migratory Bird Treaty Act.” The Service published the initial list required by the MBTRA on March 15, 2005 (70 FR 12710).

This notice is strictly informational. It merely updates our 2005 list of the bird species that are included in the four migratory bird treaties (see below) but to which the MBTA does not apply. The presence or absence of a species on this list has, by itself, no legal effect. This list does not change the protections that any of these species might receive under other international agreements and statutes, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; T.I.A.S. 8249), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or the Wild Bird Conservation Act of 1992 (16 U.S.C. 4901 et seq.). Regulations implementing the MBTA are in parts 10, 20, and 21 of title 50 of the Code of Federal Regulations (CFR). The list of migratory birds covered by the MBTA is located at 50 CFR 10.13. Elsewhere in today's *Federal Register*, we publish a final rule to update the list of migratory bird species protected under the MBTA at 50 CFR 10.13; that rule contains

information on the four migratory bird treaties between the United States and four neighboring countries (Great Britain (for Canada), Mexico, Russia, and Japan).

What Was the Response of the Public to the Draft List?

On November 28, 2018, we published in the *Federal Register* (83 FR 61161) a notice announcing a draft list of the nonnative, human-introduced bird species to which the MBTA does not apply. We solicited public comments on the draft list for 60 days, ending on January 28, 2019. We received two comments in response to the draft list, one from a private individual and one from an organization. Below, we discuss the comments we received and our responses to them.

Comment (1): We received one comment from the Western Energy Alliance, which requested that we include European starling (*Sturnus vulgaris*) and house sparrow (*Passer domesticus*) on the list of bird species not protected by the MBTA.

Response: The draft list of nonnative, human-introduced species was restricted to species belonging to biological families of migratory birds covered under any of the migratory bird treaties with Great Britain (for Canada), Mexico, Russia, or Japan. We excluded species not occurring in biological families included in the treaties from the draft list. For clarification purposes, following the list of species, we have added a list of biological families that do not qualify for protection under the MBTA and that have species known to occur in the United States or U.S. territories, whether human-introduced or by natural occurrence. This includes house sparrow (*Passer domesticus*), which occurs in the Passeridae family, and European starling (*Sturnus vulgaris*), which occurs in the Sturnidae family. As defined in the treaty with Japan, the only members of the Sturnidae family that qualify for protection under the MBTA are those included in that treaty's annex that occur naturally in the United States or U.S. territories.

Comment (2): A private individual commented on the significance of birds to healthy ecosystems, to natural habitats, and to humans. The commenter also noted the decline of bird populations and that nonnative species can displace native bird species.

Response: The purpose of this updated list of bird species to which the MBTA does not apply is to reflect current taxonomy and distribution. This list itself does not reflect the Service's obligation and efforts to conserve healthy bird populations.

What Criteria Did We Use To Identify Bird Species Not Protected by the MBTA?

The criteria remain the same as stated in our notice published on March 15, 2005, at 70 FR 12710.

Summary of Updates to the 2005 List of Bird Species Not Protected by the MBTA

This notice presents a list of species that are not protected by the MBTA to reflect current taxonomy, to remove one species that no longer occurs in a protected family, and to remove two species as a result of new distributional records documenting their natural occurrence in the United States. We present the taxonomic updates in the list below. Japanese bush-warbler (*Cettia diphone*), great black hawk (*Buteogallus urubitinga*), and red-legged honeycreeper (*Cyanerpes cyaneus*) appeared on the March 15, 2005, list (70 FR 12710), but are not on this list. Japanese bush-warbler no longer occurs in a protected family due to changes in taxonomy. New distributional records document the natural occurrence of great black hawk and red-legged honeycreeper in the United States.

Please note that the distributional records concerning great black hawk came to our attention after the publication of our draft list on November 28, 2018 (83 FR 61161); therefore, while our draft list included great black hawk on the list of species that are not protected by the MBTA, this list does not. See our final rule to update the list of migratory bird species protected

under the MBTA at 50 CFR 10.13, published elsewhere in today's *Federal Register*, for more information about the status of great black hawk under the MBTA.

The List

What are the nonnative, human-introduced bird species to which the MBTA does not apply that belong to biological families of migratory birds covered under any of the migratory bird conventions (treaties) with Great Britain (for Canada), Mexico, Russia, or Japan?

We made this list as comprehensive as possible by including all nonnative, human-assisted species that belong to any of the families referred to in the treaties and whose occurrence(s) in the United States or U.S. territories have been documented in the scientific literature. It is not, however, an exhaustive list of all the nonnative species that could potentially appear in the United States or U.S. territories as a result of human assistance. New species of nonnative birds are reported annually in the United States, and it is impossible to predict which species might appear in the near future.

The appearance of a species on this list does not preclude its addition to the list of migratory birds protected by the MBTA (50 CFR 10.13) at some later date should evidence come to light confirming natural occurrence in the United States or U.S. territories.

The list arranges 122 species by family according to the American Ornithological Society (AOS) (1998, as amended and following taxonomy in the AOS 2019 supplement). Within families, the list arranges species alphabetically by scientific name. Common and scientific names follow Clements et al. (2017); any names occurring differently in the AOS 2019 supplement are in parentheses.

Family Anatidae

Mandarin Duck, *Aix galericulata*

Egyptian Goose, *Alopochen aegyptiaca*

Philippine Duck, *Anas luzonica*

Graylag Goose, *Anser anser*

Domestic Goose, *Anser anser* 'domesticus'

Swan Goose, *Anser cygnoides*

Bar-headed Goose, *Anser indicus*

Red-breasted Goose, *Branta ruficollis*

Ringed Teal, *Callonetta leucophrys*

Maned Duck, *Chenonetta jubata*

Coscoroba Swan, *Coscoroba coscoroba*

Black Swan, *Cygnus atratus*

Black-necked Swan, *Cygnus melancoryphus*

Mute Swan, *Cygnus olor*

White-faced Whistling-Duck, *Dendrocygna viduata*

Rosy-billed Pochard, *Netta peposaca*

Red-crested Pochard, *Netta rufina*

Cotton Pygmy-Goose, *Nettapus coromandelianus*

Orinoco Goose, *Oressochen jubatus* (*Neochen jubata*)

Hottentot Teal, *Spatula hottentota*

Ruddy Shelduck, *Tadorna ferruginea*

Common Shelduck, *Tadorna tadorna*

Family Phoenicopteridae

Lesser Flamingo, *Phoeniconaias minor*

Chilean Flamingo, *Phoenicopterus chilensis*

Family Columbidae

Nicobar Pigeon, *Caloenas nicobarica*

Asian Emerald Dove, *Chalcophaps indica*

Rock Pigeon, *Columba livia*

Common Wood-Pigeon, *Columba palumbus*

Luzon Bleeding-heart, *Gallicolumba luzonica*

Diamond Dove, *Geopelia cuneata*

Bar-shouldered Dove, *Geopelia humeralis*

Zebra Dove, *Geopelia striata*

Spinifex Pigeon, *Geophaps plumifera*

Partridge Pigeon, *Geophaps smithii*

Wonga Pigeon, *Leucosarcia melanoleuca*

Crested Pigeon, *Ocyphaps lophotes*

Common Bronzewing, *Phaps chalcoptera*

Blue-headed Quail-Dove, *Starnoenas cyanocephala*

Island Collared-Dove, *Streptopelia bitorquata*

Spotted Dove, *Streptopelia chinensis*

Eurasian Collared-Dove, *Streptopelia decaocto*

African Collared-Dove, *Streptopelia roseogrisea*

Family Trochilidae

Black-throated Mango, *Anthracothorax nigricollis*

Family Rallidae

Gray-cowled Wood-Rail, *Aramides cajaneus*

Family Gruidae

Demoiselle Crane, *Anthropoides virgo*

Sarus Crane, *Antigone antigone*

Black Crowned-Crane, *Balearica pavonina*

Gray Crowned-Crane, *Balearica regulorum*

Family Charadriidae

Southern Lapwing, *Vanellus chilensis*

Spur-winged Lapwing, *Vanellus spinosus*

Family Laridae

Silver Gull, *Chroicocephalus novaehollandiae*

Family Ciconiidae

Abdim's Stork, *Ciconia abdimii*

White Stork, *Ciconia ciconia*

Woolly-necked Stork, *Ciconia episcopus*

Black-necked Stork, *Ephippiorhynchus asiaticus*

Family Phalacrocoracidae

Red-legged Cormorant, *Phalacrocorax gaimardi*

Family Anhingidae

Oriental Darter, *Anhinga melanogaster*

Family Pelecanidae

Great White Pelican, *Pelecanus onocrotalus*

Pink-backed Pelican, *Pelecanus rufescens*

Family Threskiornithidae

Eurasian Spoonbill, *Platalea leucorodia*

Sacred Ibis, *Threskiornis aethiopicus*

Family Cathartidae

King Vulture, *Sarcoramphus papa*

Family Accipitridae

Variable Hawk, *Geranoaetus polyosoma*

Griffon-type Old World vulture, *Gyps* sp.

Bateleur, *Terathopius ecaudatus*

Family Strigidae

Spectacled Owl, *Pulsatrix perspicillata*

Family Corvidae

Black-throated Magpie-Jay, *Calocitta colliei*

White-necked Raven, *Corvus albicollis*

Carrion Crow, *Corvus corone*

Cuban Crow, *Corvus nasicus*

House Crow, *Corvus splendens*

Azure Jay, *Cyanocorax caeruleus*

San Blas Jay, *Cyanocorax sanblasianus*

Rufous Treepie, *Dendrocitta vagabunda*

Eurasian Jay, *Garrulus glandarius*

Red-billed Chough, *Pyrrhocorax pyrrhocorax*

Red-billed Blue-Magpie, *Urocissa erythroryncha*

Family Alaudidae

Japanese Skylark, *Alauda japonica*

Wood Lark, *Lullula arborea*

Calandra Lark, *Melanocorypha calandra*

Mongolian Lark, *Melanocorypha mongolica*

Family Paridae

Eurasian Blue Tit, *Cyanistes caeruleus*

Great Tit, *Parus major*

Varied Tit, *Sittiparus varius*

Family Cinclidae

White-throated Dipper, *Cinclus cinclus*

Family Sylviidae

Eurasian Blackcap, *Sylvia atricapilla*

Family Muscicapidae

Indian Robin, *Copsychus fulicatus*

White-rumped Shama, *Copsychus malabaricus*

Oriental Magpie-Robin, *Copsychus saularis*

European Robin, *Erithacus rubecula*

Japanese Robin, *Larvivora akahige*

Ryukyu Robin, *Larvivora komadori*

Common Nightingale, *Luscinia megarhynchos*

Family Turdidae

Song Thrush, *Turdus philomelos*

Red-throated Thrush, *Turdus ruficollis*

Family Prunellidae

Dunnock, *Prunella modularis*

Family Fringillidae

European Goldfinch, *Carduelis carduelis*

European Greenfinch, *Chloris chloris*

White-rumped Seedeater, *Crithagra leucopygia*

Yellow-fronted Canary, *Crithagra mozambica*

Eurasian Linnet, *Linaria cannabina*

Parrot Crossbill, *Loxia pytyopsittacus*

Island Canary, *Serinus canaria*

Red Siskin, *Spinus cucullatus*

Hooded Siskin, *Spinus magellanicus*

Family Emberizidae

Yellowhammer, *Emberiza citrinella*

Family Icteridae

Venezuelan Troupial, *Icterus icterus*

Spot-breasted Oriole, *Icterus pectoralis*

Montezuma Oropendola, *Psarocolius montezuma*

Red-breasted Meadowlark, *Sturnella militaris*

Family Cardinalidae

Orange-breasted Bunting, *Passerina leclancherii*

Red-hooded Tanager, *Piranga rubriceps*

Family Thraupidae

Yellow Cardinal, *Gubernatrix cristata*

Greater Antillean Bullfinch, *Loxigilla violacea*

Cuban Bullfinch, *Melopyrrha nigra*

Yellow-billed Cardinal, *Paroaria capitata*

Red-crested Cardinal, *Paroaria coronata*

Red-cowled Cardinal, *Paroaria dominicana*

Red-capped Cardinal, *Paroaria gularis*

Saffron Finch, *Sicalis flaveola*

Blue-gray Tanager, *Thraupis episcopus*

Cuban Grassquit, *Tiaris canorus*

The MBTA also does not apply to:

(1) Nonnative species introduced into the United States or U.S. territories by means of intentional or unintentional human assistance that belong to families or groups covered by the Canadian, Mexican, or Russian Conventions.

(2) Species native or nonnative to the United States or U.S. territories that either belong to families or groups not referred to in the Canada, Mexico, and Russia Conventions or are not included by species name in the Japan Convention. This includes the Tinamidae (tinamous), Megapodiidae (megapodes), Cracidae (chachalacas), Odontophoridae (New World quail), Phasianidae (grouse, ptarmigan, and turkeys), Pteroclididae (sandgrouse), Heliornithidae (finfoots), Burhinidae (thick-knees), Glareolidae (pratincoles), Todidae (todies), Psittacidae (parrots), Psittaculidae (Old World parrots), Meliphagidae (honeyeaters), Dicruridae (drongos), Monarchidae (monarchs), Pycnonotidae (bulbuls), Scotocercidae (bush warblers and allies),

Zosteropidae (white-eyes), Sturnidae (starlings, except as listed in Japanese treaty), Ploceidae (weavers), Estrildidae (estrildid finches), and Passeridae (Old World sparrows, including house or English sparrow), as well as numerous other families not represented in the United States or U.S. territories.

References Cited

American Ornithological Society. 2019. Sixtieth Supplement to the American Ornithological Society's Check-list of North American Birds. Auk 136:798-813.

American Ornithologists' Union. 1998. Check-list of North American birds: the species of birds of North America from the Arctic through Panama, including the West Indies and Hawaiian Islands. 7th edition. Washington, DC.

Clements, J. F., T. S. Schulenberg, M. J. Iliff, D. Roberson, T. A. Fredericks, B. L. Sullivan, and C. L. Wood. 2017. The eBird/Clements checklist of birds of the world: v2017. Downloaded from <http://www.birds.cornell.edu/clementschecklist/download/>

Authority

The authority for this notice is the Migratory Bird Treaty Reform Act of 2004 (Division E, Title I, Sec. 143 of the Consolidated Appropriations Act, 2005; Pub. L. 108-447), and the Migratory Bird Treaty Act (16 U.S.C. 703–712).

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